Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for decision

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers),
applicant,

and

G4S Secure Solutions (Canada) Ltd.,
employer.

Board Files: 29033-C, 29052-C and 29054-C

Teamsters Local Union No. 213,
applicant,

and

G4S Secure Solutions (Canada) Ltd.,
employer.

Board Files: 29055-C, 29056-C, 29057-C, 29058-C, 29059-C, 29061-C, 29062-C and 29063-C

Pre-Board Screeners, Logistics, Manufacturing and Allied Trades Union (CLAC), Local 56,
applicant,

and

G4S Secure Solutions (Canada) Ltd.,
employer.

Board File: 29071-C

Canada

International Association of Machinists and Aerospace Workers, Transportation District 140, Local Lodge 16,
applicant,

and

G4S Secure Solutions (Canada) Ltd.,
employer.

Board Files: 29077-C, 29078-C, 29079-C, 29080-C, 29081-C, 29082-C, 29083-C, 29084-C, 29085-C, 29086-C and 29087-C

International Association of Machinists and Aerospace Workers,
applicant,

and

G4S Secure Solutions (Canada) Ltd.,
employer.

Board File: 29088-C

Neutral Citation: 2012 CIRB **625**
February 13, 2012

Counsel of Record

Mr. Sean Fitzpatrick and Ms. Amanda Pask, for the International Association of Machinists and Aerospace Workers and the International Association of Machinists and Aerospace Workers, Transportation District 140, Local Lodge 16;

Mr. E. Casey McCabe, for Teamsters Local Union No. 213;

Mr. Robert Healey, for the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers);

Mr. Tim Charron, for the Pre-Board Screeners, Logistics, Manufacturing and Allied Trades Union (CLAC), Local 56; and

Mr. William D. Anderson, for G4S Secure Solutions (Canada) Ltd.

The Canada Industrial Relations Board (the Board), composed of Ms. Elizabeth MacPherson, Chairperson and Messrs. John Bowman and David Olsen, Members, has considered the above-cited applications for certification. Having reviewed the comprehensive written submissions of the parties, the Board is satisfied that it can determine the applications on the basis of the written record and therefore exercises its discretion, pursuant to section 16.1 of the *Canada Labour Code* (*Part I–Industrial Relations*) (the *Code*) to determine these matters without an oral hearing.

Although the Board has not formally consolidated all of the above-cited applications, it has considered them individually and collectively for the purpose of reaching the policy decision reflected in these reasons.

I–Background

[1] The Canadian Air Transport Security Authority (CATSA) is a Crown corporation created by the government of Canada in response to the events of September 11, 2001. It is responsible for protecting the public by securing various elements of the air transportation system, and in particular, for screening air travelers and their baggage. For the most part, such screening is conducted by private sector security service providers working under contract to CATSA.

[2] In January 2011, CATSA issued a Request for Proposal (RFP), seeking contractors to provide passenger and baggage screening services at 89 airports in Canada. The RFP grouped the airports into four areas or regions: Pacific, Prairies, Central and East. The 2011 RFP represented a major change in the way CATSA deals with contracting for security screening services, and has resulted in significant labour relations consequences for the employees of the unsuccessful bidders and the bargaining agents that had been certified by the Board to represent those employees for the purposes of the *Code*.

[3] One feature of the security screening industry is that, although the employer (the contracted private sector service provider) may change at various times as a result of CATSA's contracting policies and processes, the workforce remains relatively stable because the pool of employees with

the necessary qualifications to perform the work is limited. As a consequence, new service providers routinely hire most, if not all, of the employees of the former service provider at each airport. However, a change of employer through contracting arrangements does not trigger the successor rights provisions of the *Code*, and thus the bargaining agent that represented the employees with the former service provider is obliged to seek the right to represent the employees with the new service provider through a new application for certification.

[4] In August 2011, the identity of the successful bidder for each region was announced by CATSA. The initial contracts are for a period of 65 months, from November 1, 2011 to March 31, 2017, with a possibility of renewal. The announcement revealed that there would be a change of contractor at numerous airports throughout the country. In the period between August and October 31, 2011, the unions representing the employees who provide screening services took steps to ensure that access to collective bargaining would continue despite the change of employers, through organizing activities and/or voluntary recognition arrangements. Three of the major unions involved, the International Association of Machinists and Aerospace Workers (IAMAW), Teamsters Canada and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (USW), reached an agreement under the auspices of the Canadian Labour Congress (CLC) that they would only seek certification for the groups of employees that they represented immediately before the contract changeover. This agreement averted a series of potentially disruptive displacement campaigns and assured labour stability at the various airports with unionized workforces during the transition to the new regime.

[5] G4S Secure Solutions (Canada) Ltd. (G4S) was the successful bidder for CATSA's Pacific region, which consists of 21 airports in British Columbia and the Yukon. G4S had not previously been an employer of screening employees in this region and consequently the Board received certification applications from the IAMAW, the International Association of Machinists and Aerospace Workers, Transportation District 140, Local Lodge 16 (IAMAW 16), Teamsters Local Union No. 213 (Teamsters 213), the USW and the Pre-Board Screeners, Logistics, Manufacturing and Allied Trades Union (CLAC), Local 56, affiliated with the Christian Labour Association of Canada (CLAC 56), which collectively cover all of the airports in the Pacific region.

II–Preliminary Issue–Requests for Intervenor Status

[6] The Board received requests for intervenor status in Board file 29078-C, IAMAW 16's application for certification with respect to the Vancouver airport, from Mr. Kuldip Brar Singh and the Canadian Airport Workers Union (CAWU).

[7] There is no common law right to intervenor status. The Board's power to grant intervenor status flows implicitly from its general power to hear and determine the matters that come before it. The test applied by this Board in determining whether or not intervenor status will be granted is whether the intervention will assist the Board in furthering the objectives of the *Code*.

[8] Mr. Kuldip Brar Singh is a member of the bargaining unit that IAMAW 16 has applied to represent. His submission has not persuaded the Board that his intervention, if such status were to be granted, would assist the Board in furthering the objectives of the *Code*. Accordingly, Mr. Singh's request for intervenor status is denied.

[9] The CAWU is the certified bargaining agent for security screeners at three airports in Ontario, including the Lester B. Pearson International Airport in Toronto. The CAWU claims to have members who work at the Vancouver airport, but it has not submitted an application in its own right for certification in respect of that or any other airport in the Pacific Region. The CAWU's submission has not persuaded the Board that its intervention, if such status were to be granted, would assist the Board in furthering the objectives of the *Code*. Accordingly, the CAWU's request for intervenor status in Board file no. 29078-C is denied.

III–Positions of the Parties

A–G4S

[10] G4S objects to all of the certification applications involving airports in the Pacific Region, and submits that the only appropriate unit for collective bargaining is one that consists of all G4S employees in the Pacific Region who are directly engaged in security screening, including the

screening of passengers, baggage, airport employees, non-passengers, vehicles and cargo, excluding Service Delivery Managers and persons performing management functions within the meaning of the *Code*.

[11] G4S explains that it has created an Aviation Security division designed and organized to deliver aviation security services to the Pacific Region as an integrated business unit. Under a Chief Operating Officer (COO), G4S has established the positions of "Vice-President Operations Vancouver" and "Director of Operations Pacific". The former is responsible for all of the terminals that make up the Vancouver International Airport, while the latter is responsible for the remainder of the Pacific Region, which is subdivided into regions or airports headed by a Regional Service Delivery Manager (RSDM) or Service Delivery Manager (SDM): North Pacific (Terrace, Smithers, Prince Rupert and Sandspit); East Pacific (Prince George, Fort St. John, Williams Lake, Dawson Creek and Quesnel); South Pacific (Castlegar, Kamloops, Cranbrook, Penticton and Abbotsford); West Pacific (Cambell River, Nanaimo and Comox) and three individual airports (Victoria, Kelowna and Whitehorse).

[12] G4S submits that the Board should revise its current approach to certifying bargaining units in the security screening industry on an airport specific basis, and should take into account CATSA's new, long term service agreements for airports in the four geographic regions. In G4S' view, the existing bargaining unit structure in the Pacific Region is fragmented, haphazard and counter to the process by which CATSA now awards contracts. It suggests that the fact that the unions and the former service providers negotiated multi-location master collective agreements is a tacit acknowledgment that more uniformity is required. The employer refers to the Board's stated preference for larger bargaining units and suggests that, in this case, a regional unit should be preferred in the interests of efficiency and consistency.

[13] G4S submits that there is a strong community of interest among the screening officers providing services at the designated airports in the Pacific Region, as they hold the same positions and perform a similar type of work, receive the same training and certification and are subject to the same policies. It suggests that screeners should be able to transfer to various airports within the region for personal benefit or advancement without the impediment of bargaining unit restrictions.

[14] The employer argues that a regional bargaining unit would promote sound labour relations, as the employer would only have to deal with one bargaining agent, in one set of negotiations that would result in a single collective agreement for the entire region. It suggests that the structure of its contract with CATSA makes it clear that CATSA is seeking a common framework of employment conditions that could be more easily facilitated with a single regional bargaining unit. G4S also suggests that a single unit will promote industrial stability, by averting the requirement for a multiplicity of negotiations and ensuring that a strike at one airport or group of airports would not be able to affect operations at other airports.

[15] G4S also opposes the groupings of airports proposed by the IAMAW 16 and Teamsters 213, which are based on the representation rights that those applicants held with the previous contractors. The employer suggests that these unions are improperly attempting to organize only a segment of the enterprise, rather than the larger, more appropriate regional bargaining unit.

B–Teamsters 213

[16] Prior to November 1, 2011, Teamsters 213 represented screeners at seven airports in the Pacific Region: Dawson Creek, Prince Rupert, Quesnel, Sandspit, Smithers, Terrace-Kitimat and Williams Lake. Teamsters 213 therefore submitted a certification application in respect of each of these airports (Board file nos. 29055-C, 29056-C, 29057-C, 29058-C, 29059-C, 29061-C and 29062-C respectively), as well as an alternative application to consolidate the units at these seven airports into a single bargaining unit (Board file no. 29063-C). As part of the IAMAW's agreement with Teamsters Canada, IAMAW 16 agreed not to seek certification for the unit at Dawson Creek and supports the Teamsters 213 application for that unit.

[17] Teamsters 213 opposes the position put forward by G4S that there should be a single bargaining unit composed of all screeners working for the employer in the Pacific Region. It argues that single airport bargaining units continue to be appropriate, although it also suggests that a unit composed of groups of airports may be appropriate, depending on the facts and circumstances.

[18] Teamsters 213 takes the position that neither CATSA's revised RFP nor its screening contractor qualification program has had any effect on the manner in which individual employees perform their duties and that CATSA's mandate remains the same. It argues that airport by airport bargaining units will not impede the advancement of CATSA's goals or G4S' ability to fulfill the requirements of its contract with CATSA.

[19] Teamsters 213 submits that the agreement reached by the CLC affiliates at the national level recognized the *status quo*, and that its applications are consistent with that agreement and with the Board's longstanding policy with respect to screener bargaining units. It points out that the 22 airports in the Pacific Region fall into different CATSA classifications: Vancouver is a Class I airport; Kelowna, Victoria, Prince George, Nanaimo and Whitehorse are Class II airports and the remaining 16 airports, including the seven airports for which Teamsters 213 seeks certification, are classed as "other". It contends that there is a distinctly different community of interest between the screeners in Vancouver and those working in the much smaller, more remote locations. Teamsters 213 suggests that the interests of the more than 700 Vancouver screeners would significantly overshadow the interests of the employees in all of the remaining airports, should they be combined in a single bargaining unit.

[20] Teamsters 213 also points out that the employees in the seven airports that it represents have no interest in lateral mobility within the Pacific Region, particularly where it might mean that employees from other airports could transfer into their airport and potentially displace them. It also suggests that working conditions and manpower requirements are considerably different at small airports, where low traffic volumes may result in split shifts. Teamsters 213 disputes the employer's proposition that a single regional bargaining unit would promote sound labour relations, arguing that the geographic disparities result in different interests and priorities in northern airports than those found in Vancouver or Victoria.

[21] Teamsters 213 argues that the Board should consider the geographic distances between the airports that it represents and the effect of these geographic considerations on the community of interest among employees. It points out that there is, in fact, no interdependence or interchangeability of the jobs as between separate airport locations and thus no lateral mobility. It has concerns that,

given the numbers involved, the interests of the employees in Vancouver would overwhelm those of the employees in the smaller airports. It also indicates that it has the support of a majority of the employees at the seven airports that it has applied to represent, and that the wishes of these employees should be considered.

[22] Teamsters 213 also points to the fact that it was able to negotiate a common collective agreement with the previous contractor for the seven units that it represents, without any stoppage of work, as evidence that the current bargaining unit structure is effective and disputes G4S' suggestion that a single large bargaining unit would provide better labour relations stability or effective collective bargaining. It suggests that the manner in which G4S has organized its aviation division demonstrates a recognition of the geographical uniqueness of the airports within the Pacific Region. Furthermore, it suggests that G4S has not met the onus on it to demonstrate that the current bargaining unit structure is not appropriate for collective bargaining.

[23] In total, approximately 88 employees are affected by Teamsters 213's applications. With respect to its own alternative application to group the seven airports that it represents into a single unit, Teamsters 213 suggests that all of these airports have relatively equal employee complements, ranging from three in Dawson Creek to 12 in Smithers and Terrace–Kitimat respectively. As a result, no one airport would dominate the bargaining unit. Nevertheless, Teamsters 213 submits that the existing individual airport bargaining units remain appropriate for collective bargaining, and opposes the consolidation of all airports in the Pacific Region into a single bargaining unit.

C–IAMAW and IAMAW 16

[24] The primary application, made by IAMAW 16 (Board file no. 29077-C), requests a bargaining unit comprised of the 11 bargaining units in the Pacific Region that the applicant currently represents. In the alternative, IAMAW 16 has filed separate applications for bargaining units of screeners at Vancouver, Victoria, Kelowna, Comox, Cranbrook, Nanaimo, Fort St. John, Prince George, Penticton and Campbell River (Board file no. 29078-C, 29079-C, 29080-C, 29081-C, 29082-C, 29083-C, 29084-C, 29085-C, 29086-C and 29087-C, respectively). In addition, the IAMAW has applied in its own right for certification to represent non-union employees working at

the airport in Castlegar (Board file no. 29088-C). Collectively, the certification applications filed by the IAMAW and IAMAW 16 involve some 1,111 of the 1,257 screeners in the Pacific Region.

[25] The IAMAW and IAMAW 16 oppose G4S' proposal to define the scope of the bargaining unit by reference to the scope of the contract with CATSA that the employer currently holds. It points out that there are 89 designated airports across the country that fall within CATSA's mandate, and that CATSA has used different groupings in the past when it went to tender for screening contractors. Furthermore, alterations in the scope of CATSA's contracts can be made at any time, as CATSA has full discretion as to how it organizes its tendering process. In the past, CATSA has even replaced contractors mid-contract for various reasons. The IAMAW urges the Board to be cautious in considering the employer's proposal for a bargaining unit that is based on a single CATSA contract, given that CATSA is under no obligation to renew that contract and is free to fundamentally alter the scope of the contract when it retenders.

[26] The IAMAW submits that CATSA's declared interest, as set out in the RFP, is that the screening contractors maintain positive and productive relationships with bargaining agents and that this interest is better served by the bargaining units it proposes, rather than the one proposed by G4S. It also notes that none of the contractors who were successful in the 2011 bidding process for the other CATSA regions are proposing bargaining unit consolidations that would fundamentally alter the bargaining structures in those regions.

[27] The IAMAW places considerable emphasis on the agreement that was reached at a national level, under the auspices of the CLC, by the unions representing screeners at various Canadian airports. The purpose of that agreement was to ensure that there would be no extensive inter-union conflict and disruption, by confirming that each union would only seek certification for the groups of employees that it had represented immediately before the contract changeover date. In the Pacific Region, the IAMAW and the Teamsters agreed that neither would apply for certification to represent any units that they did not represent as of October 31, 2011. In the IAMAW's submission, the bargaining unit proposed by G4S would exacerbate inter-union rivalry and labour unrest and invites conflict going forward.

[28] The IAMAW also indicates that, despite holding individual certifications for specific airports in British Columbia, it has been successful in negotiating multi-unit master collective agreements for the screeners it represented in the past. Thus, even within the Board's established policy of airport by airport certification, the parties have been able to achieve the benefits of wider based bargaining on a voluntary basis.

[29] The IAMAW suggests that the Board has been properly wary of making changes to the bargaining unit structure given the nature of this industry – namely that, while operations continue, the employers change frequently. It suggests that the Board's preference to date for airport by airport units recognizes that the workers in this sector must repeatedly reorganize each time that CATSA brings in a new contractor.

[30] IAMAW 16 submits that the Board should include geographic considerations in its analysis and points out that the unit it proposes covers points that are within 1,300 kms of one another, while the unit proposed by G4S encompasses locations that are separated by some 2,500 kms. It also points out that the units that it represents have a history of joint bargaining that does not exist at other locations proposed for inclusion by the employer. Furthermore, the employees covered by the IAMAW 16's application have indicated their desire to be represented by the applicant, while the employees at the other airports have not. It points out that, although G4S is new to the scene in British Columbia, there are long established relationships between the screening employees and their unions. In fact, given the nature of this industry, union affiliation is often more stable than employer affiliation and contributes to labour relations stability. The IAMAW submits that, given the frequent turnover of service providers at these airports, this is an industry in which it is not appropriate to base the bargaining unit structure on the organizational structure of a single service provider.

[31] The IAMAW submits that, while the bargaining unit that it has proposed is appropriate for collective bargaining, the unit proposed by G4S lacks the support of a history of shared union affiliation and bargaining and introduces a number of negative factors, such as inter-union conflict and labour turbulence, that do not currently exist.

[32] In the alternative, the IAMAW submits that the existing airport by airport bargaining unit structure remains appropriate for collective bargaining. The IAMAW implicitly suggests that the Board apply the test set out in section 18.1 of the *Code* – namely that the Board must first be satisfied that the existing bargaining units are no longer appropriate for collective bargaining before it embarks on a review of the structure of those units. It argues that G4S has not put forward any evidence to demonstrate that the existing bargaining unit structure does not work, or that the facts have altered to such a degree that the previous bargaining unit structure would have a detrimental labour relations impact or would prevent the parties from reaching collective agreements.

[33] The IAMAW also objects to the employer's effort to limit the scope of the bargaining unit by inserting the word "directly" to modify the current phrase "employees engaged in security screening." It points out that G4S has not made any submissions in support of this proposed modification, which deviates from the Board's established practice, and submits that the Board should retain its existing bargaining unit descriptor. The IAMAW also confirms its understanding that there is no dispute over the inclusion of permanent Point Leaders in the bargaining unit or the exclusion of the Service Delivery Managers from the unit.

D–USW

[34] The USW has applied for certification to represent screening employees at three airports, Abbotsford, Kamloops and Whitehorse (Board file nos. 29033-C, 29052-C and 29054-C, respectively).

[35] The USW also opposes the employer's proposal for a single, region-wide bargaining unit, and argues that single airport bargaining units remain appropriate notwithstanding any administrative policy changes by CATSA. Although the USW has applied to represent only 3 bargaining units in the Pacific Region, it represents bargaining units of security screeners in airports across Canada and therefore has considerable experience in this sector. It points out that the entire security industry is characterized by competition among service providers on the basis of cost. In the case of airport security screeners, CATSA has the statutory responsibility to provide screening services at designated airports, which it does through a series of contracts. CATSA has the authority to establish

its own contracting policies and to determine how its contracts for service will be structured. The relationship between G4S and CATSA is therefore one of contractor and client, with the client determining how the services will be provided. The USW argues that the Board should not shape bargaining unit structures on the basis of the policies and preferences of CATSA, which can change at any time.

[36] The USW also points out that when G4S assumed the contract for the airports in the Pacific Region on November 1, 2011, it hired most or all of the pre-board screening officers who had been employed by the previous contractor; those employees continued to provide precisely the same services as they had previously, and by operation of section 47.3 of the *Code*, their remuneration remained unchanged.

[37] The USW submits that G4S' organizational structure is no more centralized or integrated than that of any previous contractor, and could change at any time in the future. The USW therefore argues that the employer's organizational structure is not a stable basis upon which to assess the appropriateness of the bargaining unit proposed by G4S. It points out that the current exercise is necessitated by CATSA's decision to change contractors and the lack of successor rights in such cases. It argues that the screeners are simply seeking to once again avail themselves of their statutory right to be represented by the bargaining agent of their choice, and that a new employer should not be permitted to use retendering as an opportunity to interfere in the employees' exercise of this right. The USW notes that contractors in other regions, notably Garda Security Screening Inc. (Garda) in Ontario and Securitas Transport Aviation Security Limited (Securitas) in Quebec, have voluntarily recognized the pre-existing certified bargaining agents and have not sought to restructure the bargaining units in those regions.

[38] The USW points out that the Board's role in a certification application is to determine whether the proposed unit is appropriate for collective bargaining, not to determine whether there is some possibly more appropriate configuration. In this case, G4S has provided no evidence that the current structure is no longer appropriate. With respect to G4S' reliance on the stated Board policy of preferring larger units, the USW points out that the cases in which that preference was expressed involved reviews of existing bargaining relationships in which there was evidence from years of

labour relations experience on which to base the determination. In addition, those cases involved large, complex operations involving many different occupations and are distinguishable from the facts in these proceedings, which involve a new employer with no labour relations experience in this industry.

[39] The USW also disputes the employer's contention that there is a community of interest among the employees at the various airports in the Pacific Region, pointing out that, in this region, there is one Class 1 airport (Vancouver); four Class 2 airports (Victoria, Kelowna, Prince George and Whitehorse); and the remainder are Class Other. In the USW's submission, the operational and administrative distinctions between these CATSA-defined classes are reflected in differences in interests among screeners at these airports. As these airports are generally a considerable distance from one another, the USW refutes the employer's suggestion that lateral mobility is a consideration and submits that there is no evidence of any such interchange in the past.

[40] The USW points out that, in the past, collective bargaining with other employers in this industry has often involved common tables for airports of similar size, class or location. Should the Board retain the current airport by airport bargaining unit structure, there would be no impediment to continuing this practice. The USW submits that labour stability will be maintained by retaining the current structure.

E–CLAC 56

[41] Prior to the change in security screening contractors, CLAC 56 represented the security screeners employed by Garda at the Kamloops airport. On November 1, 2011, it submitted an application for certification (Board file no. 29071-C) to continue representing this bargaining unit. It should be noted that the USW has filed a competing application with respect to the Kamloops bargaining unit.

[42] CLAC 56 opposes the employer's proposal for a single, region-wide bargaining unit and submits that the unit at the Kamloops airport is appropriate for collective bargaining. It points out that there has been no evidence of industrial instability in the current configuration, and in particular

no evidence of labour unrest at the Kamloops Airport. CLAC 56 submits that a more likely source of labour unrest would arise if the Board were to compel employees to join a bargaining unit in which the majority of members live and work hundreds of miles away and that is represented by a bargaining agent that they have not selected and do not support.

[43] CLAC 56 suggests that the Board should only review a bargaining unit structure when there is a factual basis to conclude that labour relations stability has eroded. It submits that G4S' concerns are speculative and that there are currently no labour relations difficulties with an airport by airport bargaining unit structure that require redress.

IV–Analysis and Decision

[44] Historically, the Board's practice has been to issue certification orders involving pre-board screeners on an airport specific basis, as opposed to multi-location or province-wide bargaining units. This practice arose at a time prior to the creation of CATSA, when pre-board screening was conducted by contractors hired by the airlines operating out of a given airport. As there were a multiplicity of screening contractors in the industry, despite its stated preference for larger bargaining units, the Board ordinarily opted to certify the bargaining agents on a single location basis.

[45] CATSA's recent decision to organize its screening contracts on a regional basis and the subsequent submission by G4S that a region-wide bargaining unit would be the most appropriate, has caused the Board to conduct a policy review of its previous practice. For the reasons that follow, the Board has decided that it will maintain the *status quo*, unless both the employer and the certified bargaining agent agree to a different configuration and are able to persuade the Board that there is a valid labour relations rationale for that configuration.

[46] The *Code* gives effect to the Charter guarantee of freedom of association and, in particular, articulates that it is the basic right of each employee to join the trade union of their choice and to participate in its lawful activities (see section 8(1) of the *Code*). In order to uphold these fundamental values, the *Code* provides for employees to be grouped together in a bargaining unit represented by the bargaining agent able to demonstrate that it has the support of a majority of the employees in the

unit. Section 27(1) of the *Code* gives the Board considerable discretion with respect to the determination of the bargaining units that are appropriate for collective bargaining:

> 27. (1) Where a trade union applies under section 24 for certification as the bargaining agent for a unit that the trade union considers appropriate for collective bargaining, **the Board shall determine the unit that, in the opinion of the Board, is appropriate for collective bargaining**.
>
> (2) **In determining whether a unit constitutes a unit that is appropriate for collective bargaining, the Board may include any employees in or exclude any employees from the unit proposed by the trade union.**
>
> (3) Where a trade union applies under section 24 for certification as the bargaining agent for a unit comprised of or including professional employees, the Board, subject to subsections (2) and (4), shall determine that the unit appropriate for collective bargaining is a unit comprised of only professional employees, unless such a unit would not otherwise be appropriate for collective bargaining.
>
> (4) In determining that a unit is appropriate for collective bargaining under subsection (3), the Board may include in the unit
> (a) professional employees of more than one profession; and
> (b) employees performing the functions, but lacking the qualifications, of a professional employee.
>
> (5) Where a trade union applies for certification as the bargaining agent for a unit comprised of or including employees whose duties include the supervision of other employees, the Board may, subject to subsection (2), determine that the unit proposed in the application is appropriate for collective bargaining.
>
> (6) The Board shall not include a private constable in a unit with other employees.
>
> (emphasis added)

[47] Numerous decisions of this Board and its predecessor, the Canada Labour Relations Board (CLRB), have affirmed the Board's absolute discretion to fashion the bargaining units that it considers appropriate for collective bargaining (see, for example, *The Royal Bank of Canada (Gibsons Branch)* (1977), 26 di 509; and [1978] 1 Can LRBR 326 (CLRB no. 111); upheld by the Federal Court of Appeal in *Royal Bank of Canada v. Service, Office and Retail Workers Union of Canada*, judgment rendered from the bench, October 4, 1978, file A-849-77, in which the employer argued for a district-wide bargaining unit and the Board certified a unit consisting of a single bank branch). The Board's longstanding jurisprudence with respect to its discretion to determine the scope of a bargaining unit is reviewed at pages 518–524 of CLRB no. 111. This jurisprudence has been consistently followed by both the CLRB and this Board.

[48] The Board uses a number of criteria when considering whether a unit is appropriate for collective bargaining, including community of interest, employee wishes, and the likely viability of the unit. While the Board has expressed a preference for wider-based units, there is no automatic presumption in favour of large units. The Board will certify a smaller unit, if necessary to give effect to the employees' constitutionally guaranteed right to freedom of association. To achieve this objective, the Board may certify a local rather than regional or national bargaining unit, even if this causes some administrative inconvenience to the employer. The Board's decision on the appropriateness of a bargaining unit will generally be upheld unless a court considers it clearly irrational (see *International Longshoremen's and Warehousemen's Union, Ship and Dock Foremen, Local 514* v. *Prince Rupert Grain Ltd.*, [1996] 2 S.C.R. 432).

[49] In this case, the employer has suggested that, because it had not previously held any airport security screening contracts, there is a clean slate insofar as the determination of the appropriate bargaining unit is concerned, and that the Board should accede to its proposal for a single regional bargaining unit. The unions representing airport security screeners rely on the Board's jurisprudence and the past history of certifications in this industry, which favour airport specific bargaining units. The unions further suggest that the Board should apply the test that it uses when considering a request for a bargaining unit review under section 18.1 of the *Code*, namely that the Board must be satisfied that the existing bargaining units are no longer appropriate for collective bargaining and that the evidentiary burden is on G4S to demonstrate this to the Board's satisfaction.

[50] In conducting the instant policy review, and given that the applications for certification with which it is seized are technically initial applications pursuant to section 24 of the *Code*, the Board has commenced its analysis without adopting any presumptions as to the most appropriate bargaining unit for security screeners. Instead, the Board has looked at each of the factors raised by the parties and has based its decision on what it considers to be the structure most likely to achieve the objectives of the *Code*.

A–Community of Interest

[51] The Board has always placed considerable emphasis on community of interest as a factor in the creation of viable bargaining units. In this case, the employer contends that there is a community of interest among all of the screeners as they perform essentially the same functions, under the same policies, receive the same training and certification and have a shared interest in lateral mobility.

[52] The unions, on the other hand, argue that the interests of security screeners at small, remote airports is not the same as those at a Class I airport which has far greater traffic volumes and work opportunities. It was suggested that employees at the Class Other airports have no interest in lateral mobility and would not appreciate it if employees from other locations could displace them through the application of unit-wide seniority in the event of promotions or layoffs.

[53] The democratic process only requires that a majority of the employees in a bargaining unit support an applicant in order for that applicant to be certified as the bargaining agent. The Board takes note of the fact that there are some 1,250 security screeners employed by G4S in the Pacific Region, of which over 770 are employed in Vancouver. Thus, in any bargaining unit configuration other than an airport specific one, the interests of the Vancouver based employees would be dominant and it is likely that employees in the smaller, more remote airports would have little voice or influence. In the long run, any configuration that consolidates airports of different sizes would result in a situation in which the interests of the larger airports would consistently overwhelm the interests of the screeners at the smaller airports. This concern arises with respect to the groupings proposed by both G4S and the IAMAW 16, although the Board recognizes that the grouping proposed by Teamsters 213 consists of airports that are relatively the same size.

[54] The Board is not persuaded that all of the security screeners in the Pacific Region have the same interests, and therefore the community of interest factor militates against the groupings proposed by G4S and IAMAW 16.

B–The CATSA Contract

[55] The employer suggests that the bargaining unit should mirror the region that has been defined by CATSA – namely the designated airports in the Pacific Region. The unions point out that CATSA can change its policies and practices regarding the scope of a screening contract at any time, and has not been reluctant to do so in the past. They suggest that this is not a stable basis on which to make a bargaining unit determination.

[56] In the Board's view, its determination of the appropriate bargaining unit should not rest primarily on a parameter that is within the sole discretion of an outside agency such as CATSA, which has a mandate focused on considerations other than labour-management relations. While the Board takes note of the manner in which CATSA has currently configured the designated airports for the purpose of security screening contracts, the Board respectfully declines to adopt this configuration as a relevant consideration in its deliberations.

C–Employer's Organizational Structure

[57] G4S argues that a single, regional bargaining unit, which takes into account its organizational structure in the Pacific Region, would result in greater administrative efficiency and labour stability. The unions argue that the employer's organizational structure can be changed at any time and that there is no necessity for bargaining units to mirror an employer's organizational structure.

[58] The Board can accept the employer's argument regarding administrative efficiency; clearly it is more efficient and economical for the employer and one bargaining agent to engage in a single round of collective bargaining and have a single collective agreement for all of the security screeners in the Pacific Region. However, the Board is not persuaded that a single unit would necessarily bring greater labour stability, particularly given the history of the certifications in this region. At least at the outset, there would be considerable disruption while each of the former bargaining agents sought to obtain majority support among the employees in the unit. Regardless of which bargaining agent was ultimately successful, there would continue to be dissent and the potential for sequential displacement applications going forward.

[59] Numerous employers in the federal jurisdiction, particularly those involved in the transportation industry, operate in a number of locations and yet have bargaining units that are certified on a local basis. The allegation that such units jeopardize industrial stability is simply not supported by any factual evidence. When balancing employees' statutory right to freedom of association and access to collective bargaining with considerations of an employer's organizational structure, it is the Board's view that an employer may sometimes be required to tolerate a certain level of administrative inconvenience, if that is what is required to give effect to the employees' right to select the bargaining agent of their choice.

D–Viability of the Unit

[60] Experience has demonstrated that airport specific bargaining units have been viable in the past, but the Board has no reason to believe that a single, regional unit would not be equally viable. The employer has noted the Board's expressed preference for larger bargaining units, but it must be noted that, in all of the cases cited, the Board was conducting a review of existing bargaining units with an established history of collective bargaining and thus had before it significant evidence regarding the appropriateness of the units.

[61] IAMAW 16 and Teamsters 213 have proposed consolidated bargaining units composed of the airports at which they have membership support. While it is likely that such units would also be viable, the effect of certification orders of this nature would be to solidify a structure that is based on the present level of support for each of the applicants, and to make it more difficult for the employees at a single airport to change bargaining agents should they wish to do so in the future.

[62] In this case, as all of the proposed bargaining units are arguably viable, the viability criteria is not determinative.

E–Conclusion

[63] Section 27 of the *Code* clearly provides the Board with the necessary discretion and latitude to undertake the balancing of interests that is required to determine the scope of the unit(s) that it considers appropriate for collective bargaining. The unions have directed the Board's attention to the national agreement which they reached in order to ensure labour stability during this time of transition to the new screening service providers. In view of the circumstances, the Board is of the opinion that it is advisable for it to also maintain the *status quo* during this time of transition.

[64] Balancing all of the factors described above, the Board finds that airport specific bargaining units continue to be appropriate for collective bargaining, and that a unit that groups airports, either on a regional or other basis, would not be appropriate at this time. The Board wishes to note that this decision to maintain airport specific bargaining units does not prevent the parties from bargaining in a common front arrangement, if they mutually agree to do so.

[65] The Board has also determined that it is appropriate to exclude the Service Delivery Managers and Regional Service Delivery Managers from the scope of the bargaining unit, as agreed by the parties. The Board confirms that the position of Point Leader, which exists at a number of the airports, is a position that is included in the bargaining unit.

[66] As the employer has failed to provide any rationale for its request to insert the term "directly engaged in security screening" in the bargaining unit description, the Board is not persuaded that this modification is necessary. Accordingly, the Board has determined that, in the case of the Pacific Region, the appropriate bargaining unit is:

> All employees of G4S Secure Solutions (Canada) Ltd. engaged in security screening, including the screening of passengers, baggage, airport employees, non-passengers, vehicles and cargo, at (name and location of airport), excluding service delivery managers and those above the rank of service delivery manager.

[67] Having determined the scope of the appropriate bargaining units, the Board has considered the membership evidence submitted by the various applicants and has made the following determinations:

- Teamsters Local Union No. 213's applications to represent security screening employees at the airports in Dawson Creek, Prince Rupert, Quesnel, Sandspit, Smithers, Terrace-Kitimat and Williams Lake (Board file nos. 29055-C, 29056-C, 29057-C, 29058-C, 29059-C, 29061-C and 29062-C) are granted. The alternative application to consolidate the bargaining units at these seven airports (Board file no. 29063-C) is dismissed.

- IAMAW 16's applications to represent security screening employees at the airports in Vancouver, Victoria, Kelowna, Comox, Cranbrook, Nanaimo, Fort St. John, Prince George, Penticton and Campbell River (Board file nos. 29078-C, 29079-C, 29080-C, 29081-C, 29082-C, 29083-C, 29084-C, 29085-C, 29086-C and 29087-C) are granted. The alternative application to consolidate the bargaining units at these 11 airports (Board file no. 29077-C) is dismissed.

- The IAMAW's application to represent security screening employees at the airport in Castlegar (Board file no. 29088-C) is granted.

- The USW's application to represent security screening employees at the airports in Abbotsford and Whitehorse (Board file nos. 29033-C and 29054-C) are granted.

The parties will find attached Certification Orders reflecting these decisions.

[68] The Board has ordered that a representation vote be taken at the airport in Kamloops (Board file nos. 29052-C and 29071-C), to determine whether the security screeners at that airport wish to be represented by the USW or CLAC 56. In accordance with section 30(2) of the *Code*, the ballot will

also include a choice whereby an employee can indicate that they do not wish to be represented by any of the trade unions named on the ballot.

[69] This is a unanimous decision of the Board.

Elizabeth MacPherson
Chairperson

John Bowman
Member

David Olsen
Member

Order No.: 10197-U

IN THE MATTER OF THE

Canada Labour Code

- and -

International Association of Machinists
and Aerospace Workers,

applicant,

- and -

G4S Secure Solutions (Canada) Ltd.,
Mississauga, Ontario,

employer.

WHEREAS the Canada Industrial Relations Board (the Board) has received from the applicant union an application for certification as bargaining agent for a unit of employees of G4S Secure Solutions (Canada) Ltd., pursuant to section 24 of the *Canada Labour Code (Part I–Industrial Relations)* (le *Code*);

AND WHEREAS, following investigation of the application and consideration of the submissions of the parties concerned, the Board has found the applicant to be a trade union within the meaning of the *Code*; has determined the unit described hereunder to be appropriate for

collective bargaining and is satisfied that a majority of the employees of the employer in the unit wish to have the applicant trade union represent them as their bargaining agent;

NOW, THEREFORE, it is ordered by the Canada Industrial Relations Board that the International Association of Machinists and Aerospace Workers be, and it is hereby certified to be, the bargaining agent for a unit comprising:

> *"all employees of G4S Secure Solutions (Canada) Ltd. engaged in security screening, including the screening of passengers, baggage, airport employees, non-passengers, vehicles and cargo at the West Kootenay Regional Airport, Castlegar, British Columbia,* ***excluding*** *service delivery managers and those above the rank of service delivery manager."*

ISSUED at Ottawa, this 13th day of February, 2012, by the Canada Industrial Relations Board.

Elizabeth MacPherson
Chairperson

Reference: File No. 29088-C

N° d'ordonnance : 10197-U

CONCERNANT LE

Code canadien du travail

- et -

l'Association internationale des machinistes et
des travailleurs et travailleuses de l'aérospatiale,

requérante,

- et -

G4S Solutions de sécurité (Canada) ltée,
Mississauga (Ontario),

employeur.

ATTENDU QUE le Conseil canadien des relations industrielles (le Conseil) a reçu du syndicat requérant une demande d'accréditation à titre d'agent négociateur d'une unité d'employés de G4S Solutions de sécurité (Canada) ltée, en vertu de l'article 24 du *Code canadien du travail (Partie I – Relations du travail)* (le *Code*);

ET ATTENDU QUE, après enquête sur la demande et examen des observations des parties en cause, le Conseil a constaté que le requérant est un syndicat au sens où l'entend ledit *Code*; a déterminé que l'unité décrite ci-après est habile à négocier collectivement et est convaincu que la majorité des employés dudit employeur, faisant partie de l'unité en question, veut que le syndicat requérant les représente à titre d'agent négociateur;

EN CONSÉQUENCE, le Conseil canadien des relations industrielles ordonne que l'Association internationale des machinistes et des travailleurs et travailleuses de l'aérospatiale soit accréditée, et l'accrédite par la présente, agent négociateur d'une unité comprenant :

N° d'ordonnance : 10197-U

« tous les employés de G4S Solutions de sécurité (Canada) ltée affectés au contrôle de la sécurité, y compris le contrôle des passagers, des bagages, du personnel de l'aéroport, des non-passagers, des véhicules et du fret à l'aéroport régional de West Kootenay, Castlegar (Colombie-Britannique), ***à l'exclusion*** *des chefs de la prestation du service et de ceux de niveau supérieur ».*

DONNÉE à Ottawa, ce 13e jour de février 2012, par le Conseil canadien des relations industrielles.

Elizabeth MacPherson
Présidente

Référence : n° de dossier 29088-C